IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3296 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GORDHANBHAI HUMLABHAI MEDA

Versus

DALSINGBHAI TEJIYABHAI MEDA

Appearance:

1. Special Civil Application No. 3296 of 2004

MR MA KHARADI for Petitioner No. 1

MR SUNIL S JOSHI for Respondent No. 1-4

RULE SERVED for Respondent No. 5-7

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 01/12/2004

ORAL JUDGEMENT

#. In this petition under Article 227 of the

Constitution of India, the petitioner - original plaintiff has challenged the legality and validity of the judgement and order dated 29.1.2004 passed by the learned Joint District Judge, Panchmahals camp at Dahod in Misc. Civil Appeal No.160 of 2001 in dismissing the appeal and confirming the order passed by the learned Civil Judge (Junior Division), Dahod dated 11.10.2001 below Exh.5 in Regular Civil Suit No.151 of 2001 by which both the courts below have refused to grant any injunction in favour of the original plaintiff.

#. Mr.M.A.Kharadi, learned advocate, appearing on behalf of the petitioner - original plaintiff has submitted that the land in question is allotted to the petitioner and that he is in possession of the said land. He submitted that even the revenue record also suggests that the petitioner is the owner of the land in question and ignoring the documentary evidences such as revenue record, village form etc., the trial Court refused to grant the interim relief only on the basis of the affidavit of the neighbour. He further submitted that even the appellate court has also observed in its order that to rely upon the affidavit only to prove the possession is very dangerous, still, the learned appellate court has relied upon this affidavit only on the ground that the defendants are the brothers of the petitioner - original plaintiff. Therefore, he has submitted that, when the respondents have no title over the land in question and that when the petitioner, who is a allottee of the land in question, has proved his title, then both the courts below have materially erred in not granting the injunction as prayed for, and, therefore, requested to exercise the powers under Article 227 of the Constitution of India, as, there will be a gross injustice to the petitioner - original plaintiff.

#. Mr.Joshi appearing on behalf of the respondents original defendants has failed to show any prima facie title in favour of the respondents. In fact, he has conceded that the respondents - original defendants' names did not figure in the record of right. However, he has submitted that, in fact, the petitioner and the respondents were jointly cultivating the land prior to 1957 and by taking disadvantage of the situation, the petitioner - original plaintiff has got his name included and got the order in his favour only. He further submitted that the respondents are in possession of the land in question and for that purpose, he has relied upon the affidavit, which was produced before the trial Court as well as before the appellate court and the map to the effect that the land in question is in two parts.

#. Heard the learned advocates for the parties.

#. It is an admitted position that the land in question is allotted to the petitioner - original plaintiff. The petitioner is the exclusive owner of the land in question. The name of the petitioner is also mutated in the record of right and village record also. There is no title as on today in favour of the respondents - original defendants except the affidavit in support of the defendants. There is nothing in favour of the respondents - original defendants to prove that they are in possession of the land in question. The trial Court has not granted the interim relief in spite of the allotment of the land in favour of the petitioner original plaintiff and that revenue record etc. Only on the basis of the affidavit of the neighbour, the trial Court has refused to grant the interim relief in favour of the original plaintiff and even the appellate court has observed that only to rely upon the affidavit to prove the possession will be very dangerous, still, the appellate court has relied upon the affidavit only because of the fact that the original defendants are the brother of the original plaintiff. In spite of the fact that documentary evidences support the case of the petitioner by which the petitioner - original plaintiff is allotted the land in question and is the owner of the land in question, in view of the fact that the petitioner is the owner of the land in question, which is not disputed by the respondents even today, the trial court has materially erred in rejecting the application Exh.5 and consequently the appellate court has also materially erred in confirming the said order.

#. This Court, while admitting the matter, has granted the order of status quo. Under the circumstances, the orders passed by both the courts below are required to be quashed and set aside and accordingly the same are quashed and set aside and all the parties are directed to maintain status quo till the final disposal of the suit. Considering the facts and circumstances of the case, the trial Court is directed to expedite the suit and try to dispose of the aforesaid suit preferably within a period of two years from the date of the receipt of the writ of this order subject to cooperation by all the concerned parties. It is made clear that any observations made by this Court as well as by the appellate court and the trial Court will be treated only for the purpose of deciding the interim application during the pendency of the suit and it is for the trial court to decide and dispose of the suit on merits and in accordance with law

considering the evidence which may be adduced at the time of hearing of the suit before the trial Court.

#. In view of the above, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)